(1)
Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Ezequiel Castro, Aurora Adames,
Ramon E. Castro, Ida L. Castro,

Petitioners,

v.

Puerto Rico Highway and Transportation Authority,
Fernando Fagundo, Barrett & Hale, Esteban Mujica,
Sergio González, Angel Rivera Salas, Río Construction,
Greiner Caribe, Walter Rivera,

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITION FOR A WRIT OF CERTIORARI

Ramon E. Castro, *pro se*
Aurora Adames, *pro se*
Ida L. Castro, *pro se*
HC-03 Box 12913
Carolina, P.R. 00987
Tel. 787-752-2654

QUESTIONS PRESENTED

1. Whether the doctrine set forth in *Williamson County v. Hamilton Bank*, 473 U.S. 172 (1985) can be construed such that an immunity can be created for state agencies; and thereby effectively suppress a plaintiff's claims to Due Process, the Equal Protection of the Law, and other property interests and protected rights established by Constitution of the United States of America.

2. Whether a full consideration of the criteria regarding Due Process set forth in cases *Zinermon v. Burch*, 494 U.S. 113, 126 (1990); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); and the criteria established in *Willowbrook v. Olech*, 528 US 562 (2000) regarding Vindictive action and the Equal Protection of the Law; must be considered when Plaintiffs invoke this protection in an action under 42 USC §1983 against a state agency –particularly in view of the public interest involved in claims of a continuing over-arching policy of disregard and violation of citizens' Civil Rights. As opposed to any lesser form of judicial review.

3. In *Colón-Cortés v. Pesquera*, 2000 WL 424713 (2000 TSPR 60), the Supreme Court of Puerto Rico took the extraordinary measure to enjoin the construction of the very same highway project at hand; due to the constitutional conflict arising from the state agencies' failure to comply with environmental law and decisions of that court. The question that arises is:

> Whether the courts below have properly considered the environmental law, constitutional conflict, and *res judicata* involved in the state supreme court decision in *Colón-Cortés v. Pesquera*; particularly in light of the protection for citizen's rights established by this decision –and the Equal Protection of the Law guaranteed by the Constitution of the United States of America.

PARTIES TO THE PROCEEDINGS

In the relevant decision the Court of Appeals for the First Circuit addresses two different cases from the lower District Court, i.e. case 00-1970 RLA and case 03-1287 RLA.

In both instances the Petitioners are Ezequiel Castro (deceased and substituted by his son, Ramon Castro; and his daughter, Ida Castro), and Aurora Adames (mother of Ramon and Ida Castro; and widow of Ezequiel Castro).

The Respondents in case 00-1970 RLA are the Puerto Rico Highway and Transportation Authority (hereinafter PRHTA); Mr. Sergio González (former Executive Director of PRHTA); Río Construction (construction contractor); Barrett & Hale (design contractor); Mr. Angel Rivera-Salas (former Director of PRHTA's Land Acquisitions); Mr. Walter Rivera (PRHTA Appraisal Contractor); and the relevant conjugal partnerships.

The Respondents in case 03-1287 RLA are PRHTA; Mr. Fernando Fagundo (subsequent Executive Director of PRHTA and Secretary of the Puerto Rico Department of Transportation and Public Works); and Barrett & Hale (design contractor and provider of environmental information); Mr. Esteban Mujica (former president of the state Environmental Quality Board –hereinafter EQB); and the relevant conjugal partnerships.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Ramon Castro, Aurora Adames, and Ida Castro are the surviving members of Castro family; and thus join in a common cause and a common position to respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case. (See statement App- 3)

OPINIONS BELOW

The opinions of the First Circuit (App- 4) and the district court (App-6-43) are unpublished.

JURISDICTION

The court of appeals issued its opinion on May 6, 2005. This COURT has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The situation at hand is a civil rights action under 42 USC §1983. The deprivations have occurred as part of systemic policy or continuing violation; that in turn encompasses a number of statutes and regulations (See App-44). However, the core issues revolve upon the Due Process and Equal Protection Clauses of the Fourteenth Amendments; and ultimately the guarantees of the First Amendment.

STATEMENT OF THE CASE

1. We address the highest court of this nation as *pro se* litigants; and are well aware that the COURT must allocate its resources to matters of fundamental and/or national importance. Yet we note that in 1962, Mr. Clarence Earl Gideon, a prisoner acting *pro se* and without formal legal training or extensive education, submitted a handwritten petition that was granted –and which led to the important decision in *Gideon v. Wainwright*, 372 US 335 (1963). Although Gideon had

conducted his own defense in a trial by jury; his petition set forth that, as an indigent in a criminal case, fundamental fairness required that he be provided with defense counsel.

In contrast, the situation at hand addresses an even more fundamental issue in which citizens can be altogether deprived of their right to "have their day in court". Here, the matter does not hinge on any novel theory; or on any amount of legal argument by learned counsel. Rather, the focus is on basic notions of fairness; and the application of existing doctrine set forth by this Honorable COURT.

2. The matters at hand also bear a close relationship to *Willowbrook v. Olech*; in which this COURT found that an elderly couple had been deprived of the Equal Protection of the Law by government actions that were "irrational and wholly arbitrary". Once again, the matters at hand do not invoke novel theories or discourse, but the just and equal application of existing law and doctrine.

3. The similarities with *Willowbrook v. Olech* involve both the application of the law, as well as the material facts themselves. Like the Olech family in *Willowbrook v. Olech*, the Castro family was also a retired elderly couple and even more senior than the Olechs: Ezequiel Castro was 91 years old and his wife, Aurora, is now 87. In view of the health problems associated with their age, the elderly couple has only been able to confront the burdens of this litigation through the efforts of their only son who lives in Puerto Rico: Mr. Ramon E. Castro – another similarity with *Willowbrook v. Olech* in which the senior Olechs received support from the neighboring Zimmer family, which consisted of their daughter and son-in-law.

As in the situation at hand, in *Willowbrook v. Olech* the Olech family's land was flooded by storm-water from a culvert and other improper drainage facilities. The litigation surrounding the improper drainage extended from 1989 to 1997; unfortunately, the elderly Mr.

Thaddeus Olech, 76, died in the midst of the litigation. In yet another sad and unfortunate similarity with the aforementioned case, Plaintiff Ezequiel Castro, 91, died without ever receiving his day in court in two pending federal cases (00-1970 RLA, 03-1287 RLA) –and these issues have yet to be addressed in the courts. His widow, Aurora Adames is currently bedridden; and at this writing, is recovering from a recent illness.

4. The Castro family has held the property surrounding their home for over four (4) decades. The state planned a major highway that was to affect a portion of this property –however, the Castro family has never opposed the roadway or the use of this parcel of their land. Indeed, what the Castro family has vehemently opposed are the wanton deprivations of their undisputed constitutionally protected rights; which do not in any way impede the highway project.

5. Despite decades of expenditures on engineering studies, the state's failure to properly plan became manifest by its attempt to evade the requirements of environmental law. In October 1999 the Supreme Court of Puerto Rico ordered a preliminary injunction against the Puerto Rico Highway and Transportation Authority (hereinafter **PRHTA**) and the relevant highway project. At that time the Castro family had already protested the state agency's deprivations involving Due Process and the Equal Protection of the Law –particularly in regard to the remaining property, which supposedly was to remain free of damages and/or intervention. Furthermore, the adverse environmental impact of flooding from the highway project had also become manifest.

In April 2000, the Supreme Court of Puerto Rico in *Colón-Cortés v. Pesquera* chastised both PRHTA and the Environmental Quality Board (hereinafter **EQB**) for the failure to establish a proper Environmental Impact Statement (EIS); furthermore, construction of the highway project was permanently enjoined.

6. In light of the state's repeated rejection of the Castro family's entreaties; and of its refusal to correct the situation despite the evidence available; the Castro family sought the protection of the federal district court in July 2000 in case 00-1970 RLA.

The District Court itself in case 00-1970 RLA [Docket-No. 68] summarized the Castro family's claims as involving two (2) major areas: a Pre-Deprivation Due Process Violation; and the Improper Drainage. Further, the Castro family's pleadings have noted that the state's transgressions are not isolated incidents; rather, they constitute a continuing and systemic Over-arching Policy of Callous Indifference to Citizens' Civil Rights.

7. The record will show that none of the defendants have fully answered the complaint in case 00-1970 RLA; and to this date, none of the defendants have fully addressed, much less refuted, the issues set forth in that case –all of which therefore remain unopposed. Indeed, throughout five (5) years of litigation the lower courts have provided no decision that addresses the issues regarding neither the Pre-Deprivation Due Process Violation nor the Improper Drainage.

8. At the time case 00-1970 RLA was filed, construction of the highway project was enjoined. Therefore, there was ample opportunity to address all issues without any impediment to the roadway. Unfortunately, the judicial process was subjected to years of inaction and delay. Further, the state agency (PRHTA) simply proceeded to altogether evade the judicial process by renaming the highway and establishing a new project as legally separate and distinct. In particular, a new incarnation (new configuration) of the Improper Drainage was created.

Furthermore, the state agency (PRHTA) attempted to evade the environmental issues by submitting a new Environmental Impact Statement which did not include a proper drainage study; and which did not declare known

adverse environmental impacts such as the aforementioned Improper Drainage.

9. Throughout 2002 the Castro family protested this situation; but to no avail. Despite efforts to address the claims within the framework of the original case 00-1970 RLA, PRHTA was allowed to essentially walk out the courtroom door and proceed with a *fait accompli*. Thus, the Castro family had no choice but to protect their rights by means of a new complaint that would address the new –and legally separate and distinct project; as well as the new environmental documents tendered by PRHTA.

10. Consequently, on March 17, 2003 a new case, 03-1287 RLA, arose to address the improprieties of the new incarnation of the Improper Drainage; and the state agencies' failure to comply with environmental law. Further, PRHTA's actions are completely contradictory with PRHTA's position in the previous case 00-1970 RLA –and such contradiction only suggests that a Judgment by DEFAULT be rendered against PRHTA's contentions. Moreover, this is only exacerbated by fact that, despite PRHTA's vast resources, it has failed to answer the Complaint in either case 00-1970 RLA or case 03-1287 RLA.

11. After much delay and three (3) years of litigation, the District Court finally voiced an opinion on some of the pending matters in case 00-1970 RLA. On January 17, 2003 [Docket-Nos. **146, 147**] the District Court declined to exercise subject matter jurisdiction over what it termed were "expropriation-related claims". However, the Castro family has never characterized any of its claims as "expropriation-related"; and has denounced the attempt to use inapposite doctrine from *Williamson County v. Hamilton Bank*, 473 U.S. 172 to dismiss any of the claims in the Complaint.

On January 17, 2003 [Docket-No. **145**] the District Court also refused to exercise its jurisdiction regarding the new Environmental Impact Statement; raising issues